



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-857; C-122-858]

Antidumping and Countervailing Duty Orders on Certain Softwood Lumber Products from Canada: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is notifying the public that the Court of International Trade's (CIT) final judgment in *Shake and Shingle Alliance v. United States*, Court No. 18-00228, is not in harmony with Commerce's final scope ruling and is, therefore, finding that certain cedar shakes and shingles exported by the Shake and Shingle Alliance (SSA) are not within the scope of the antidumping (AD) and countervailing duty (CVD) orders on certain softwood lumber (softwood lumber) from Canada.

DATES: Applicable April 30, 2020.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5831.

SUPPLEMENTARY INFORMATION:

Background

Commerce issued the AD and CVD orders on softwood lumber from Canada on January 3, 2018.¹ On September 10, 2018, in response to a scope ruling request filed by SSA, Commerce issued its Final Scope Ruling, finding that certain cedar shakes and shingles exported by SSA are covered by the scope of the *Orders*.² As a result of the Final Scope Ruling, Commerce instructed U.S. Customs and Border Protection (CBP) to continue suspension of liquidation of entries of SAA's certain cedar shakes and shingles.³

SAA challenged Commerce's Final Scope Ruling before the CIT. On November 13, 2019, the CIT remanded the Final Scope Ruling to Commerce to further consider the record as it pertains to the determination of the subject merchandise, to further consider record evidence as it pertains to the determination of whether cedar shakes and shingles are within the scope of the *Orders*, and to further consider prior determinations, including but not limited to scope rulings, in accordance with 19 CFR 351.225(k)(1).⁴

Pursuant to the CIT's *Remand Order*, on remand, Commerce reconsidered its Final Scope Ruling and determined that SSA's certain cedar shakes and shingles do not fall within the scope of the *Orders*.⁵ Specifically, Commerce determined that the petitioner never intended for cedar

¹ See *Certain Softwood Lumber Products From Canada: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 83 FR 347 (January 3, 2018); and *Certain Softwood Lumber Products from Canada: Antidumping Duty Order and Partial Amended Final Determination*, 83 FR 350 (January 3, 2018) (collectively, the *Orders*).

² See *Antidumping and Countervailing Duty Orders on Certain Softwood Lumber Products from Canada: Final Scope Ruling – Cedar Shakes and Shingles*, dated September 10, 2018 (Final Scope Ruling).

³ See CBP Message Numbers 9045306 and 9045308, dated February 14, 2019.

⁴ See *Shake and Shingle Alliance v. United States*, Slip Op. 19-140, Court No. 18-00228 (CIT 2019) (*Remand Order*).

⁵ See *Final Results of Redetermination Pursuant to Court Remand, Shake and Shingle Alliance v. United States*, Court No. 18-00228, Slip Op. 19-140 (CIT November 2019), dated February 13, 2020 (Final Remand Results).

shakes and shingles to be covered by the *Orders*.⁶ On April 20, 2020, the CIT sustained Commerce’s Final Remand Results.⁷

Timken Notice

In its decision in *Timken*,⁸ as clarified by *Diamond Sawblades*,⁹ the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s April 20, 2020, judgment in this case constitutes a final decision of the court that is not in harmony with Commerce’s Final Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Scope Ruling

Because there is now a final court decision with respect to this case, Commerce is amending its final scope ruling and finds that the scope of the *Orders* do not cover certain cedar shakes and shingles exported by SSA. Commerce will instruct CBP to liquidate entries of certain cedar shakes and shingles exported by SSA without regard to AD and or CVD duties, and to lift suspension of liquidation of such entries.

⁶ *Id.* at 15.

⁷ See *Shake and Shingle Alliance v. United States*, Court No. 18-00228, Slip Op. 20-52 (CIT April 20, 2020).

⁸ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

⁹ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F. 3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1) of the Act.

Dated: June 22, 2020.

Joseph A. Laroski Jr.,
Deputy Assistant Secretary
for Policy and Negotiations.

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